ELECTION OF A COMMITTEE OF THE COUNCIL FOR CONFERRING WITH THE INDIAN STATUTORY COMMISSION—*cont.*

*The hon. the PRESIDENT :—" The hon. Member for the University said yesterday that 'Reforms' is not one of the portfolios of the hon. the Revenue Member. But the distribution of portfolios published with the proceedings of the Council, dated 27th March 1928, shows that Reforms is one of the Central subjects included in the portfolio of the hon. the Revenue Member."

Mr. S. SATYAMURTI :—" Sir, my point was and is that this is a Central subject which this Government can at best administer only as an agent for the Central Government. My second point was that while the business of sending despatches to the Government of India or to the Secretary of State on the subject of Reforms may be in the portfolio of the hon. Member, the work of the Simon Commission and the appointment of a committee by this Council to confer with the Statutory Commission cannot be said to be a department administered by the hon. the Revenue Member whose sanction is necessary for this motion being in order."

Mr. K. R. VENKATARAMA AYYAR :—" Sir, I wish to raise certain points of order in connexion with the motion now moved."

* The hon. the PRESIDENT :—" Are they fresh points of order ? "

Mr. K. R. VENKATARAMA AYYAR :—" I shall simply mention them. The present motion contravenes rule 24 (*a*) (1) and (2) read with Standing Orders Nos. 54 and 55."

* The hon. the PRESIDENT :—" I believe the hon. Member has already given us his assistance yesterday on this question. I should like to avoid repetition."

Mr. K. R. VENKATARAMA AYYAR :—" The next point is that the motion raises substantially the same question as was raised in the House in its resolution of 24th and 25th January 1928 and is therefore in contravention of Standing Order No. 65 (1)."

*Mr. J. A. SALDANHA :—" Sir, I rise to a point of order which has been touched from another point of view by the hon. Member for the University. The question that was debated in the House last January was whether the House should co-operate with the Simon Commission and the House decided that they would have nothing to do with it. It is beyond the competency of this House, it is *ultra vires* of this House, to take up this question now. The House has no powers to appoint a committee to co-operate with the Simon Commission."

* The hon. the PRESIDENT :—" In that respect, I wish to know whether the hon. Member recognizes that this Council is co-operating with the South Indian Railway and the Madras and Southern Mahratta Railway by sending its representatives to their advisory committees, that this Council is co-operating with the Tata Research Institute at Bangalore by sending one of its members to the Board of that Institute, and that this Council is co-operating with the Government by electing Members to the Finance Committee which is not contemplated by the Rules and Standing Orders."

Mr. ABDUL HAMID KHAN :—" By a special resolution of the House."

4th September 1928]

* The hon. the PRESIDENT :—" Here also there is a resolution for co-operation with the Simon Commission and not with the Government."

* Mr. J. A. SALDANHA :—" Sir, the Finance Committee is constituted by the House in exercise of its financial powers. It is appointed by a resolution of the House. Then as regards Railways, things like the comforts of passengers are within the cognisance of the House. There is also the question of who is to pay the allowances for the members who are to be appointed to the Committee. The allowances of the members sent to the Railway Advisory Committees are paid by the Railways themselves and not by the Government. I want to know who is to pay the allowances for the members of the Council Committee to co-operate with the Commission. I wanted to put a specific question on this point to the hon. the Finance Member. If the hon. the President will allow me, I shall put the question to him now."

* The hon. the PRESIDENT :—" This is not question time. I am, however, prepared to waive the required notice and have the question answered by the Government to-morrow."

* Mr. J. A. SALDANHA :—" Now, Sir, I shall say that the allowances of these members who are to be elected to the Committee to co-operate with the Simon Commission will have to be met out of the funds of this Government, and I leave it to the hon. the Finance Member to contradict me if it is not so. I see, Sir, that I am not contradicted and therefore I take it for granted that the funds will have to be provided for by this Government. Now, Sir, what are our powers, the powers of the toy parliament as we call it ? "

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" Is my hon. Friend in order in calling this a toy parliament ? "

* Mr. J. A. SALDANHA :—" We had the honour of a visit from a Member of Parliament, and he stated that however well conducted our Legislative Councils might be, they were no more than toy parliaments. I have pointed out that we have not got any more powers than the tiny House of Commons of the middle ages."

The hon. the PRESIDENT :—" The hon. Member is requested to come to his point of order."

* Mr. J. A. SALDANHA :—" Sir, I submit that the burden of proof that this House has got powers to appoint a committee and invest it with certain powers and functions is on the hon. the Mover of the motion. None has spoken on this point on the other side of the House except the Advocate-General. There is no use of quoting the Standing Orders and the Rules which only fix the procedure in the House and do not give us any power. There should be some clear law showing the jurisdiction of the House in such matters. Is there anything, I ask, to show that the Council has powers to appoint a committee with equal status and powers with the Simon Commission, that they will have the same power of investigation and inquiry and examination of witnesses and access to all documents as the Simon Commission itself. . . "

* The hon. the PRESIDENT :—" What is the point of order ? I am not able to follow the hon. Member in his point of order."

* Mr. J. A. SALDANHA :—" I say, Sir, there is nothing in the law to show that we have got powers to appoint a committee like this and invest it with certain powers and functions. I challenge the hon. the Law Member or

[Mr. J. A. Saldanha] [4th September 1928

any other Member of the Government to show that under such and such a section this Committee is to be appointed. The only authority we have is based on the two letters of Sir John Simon. What power has Sir John Simon to ask this Council to appoint a committee?"

* The hon. the PRESIDENT :—" I am afraid the hon. Member is going into the merits of the question."

* Mr. J. A. SALDANHA :—" There is absolutely nothing to show that this House has got the power . . ."

12-15 p.m. * The hon. the PRESIDENT :—" I am afraid the hon. Member is repeating his own arguments."

* Mr. J. A. SALDANHA :—" Now we shall see whether there is anything in the rules or in the Act. We shall see what those functions are."

* The hon. the PRESIDENT :—" The hon. Member need not go into the question of functions; it does not comprise the point of order."

* Mr. J. A. SALDANHA :—" They are not covered by any rules at all. Then there is the schedule here; I have gone carefully through it in vain to find out whether we can exercise this power of appointing a certain committee to do certain functions and spend some amounts. There is nothing in the list to warrant that we can appoint a committee of this sort. The other day, one gentleman asked what about the Mettur Committee. What was only a deputation was called a committee."

* The hon. the PRESIDENT :—" I don't think the hon. Member is justified in taking the time of the House by advancing arguments that were addressed to him privately."

* Mr. J. A. SALDANHA :—" Every committee appointed is covered by certain rule or section of the Act. I say that this Committee is *ultra vires* and I hope the President will hold that we are acting *ultra vires* in appointing this Committee."

Mr. A. KALESWARA RAO :—" Mr. President, the most important question is whether there is a department referring to this motion and if there is no department then there can be no Member of the Government in charge of it, and as such no consent referred to in rule 24-A can be forthcoming. Here, Sir, the Statutory Commission has been appointed under section 84-A by a Royal Warrant. The Secretary of State alone has the power to suggest names to both Houses of Parliament."

* The hon. the PRESIDENT :—" I am afraid the hon. Member is going into the merits of the question. The hon. Member is requested to mention the point of order."

Mr. A. KALESWARA RAO :—" That the Simon Commission is a subject which is beyond the jurisdiction of the definition of 'subjects'."

* The hon. the PRESIDENT :—" That is a point which has already been urged by the Deputy Leader of the Congress party."

4th September 1928]

Mr. K. R. KARANT :—" Sir, I shall take not more than a minute of your time. I will concede for the sake of argument that there is a third class of motions which are not resolutions, and which can be brought with the consent of the President and the Member of Government concerned. My point of order is that anyone else can bring it, but not the person who is to give the consent, not the Member of the Government, conceding that the Member is in charge of the subject."

*Mr. G. HARISARVOTTAMA RAO :—" Mr. President, I merely wanted to refer to certain points, but my Friend from South Kanara has preceded and anticipated me. I want to elucidate the points. I refer you, Sir, to the definitions in the rules. There is the definition of a Member; there is the definition of a Member of the Government. A 'member' means a member of the Council. A 'Member of the Government' is: 'a member of the Executive Council or a Minister, and includes any member to whom such member may delegate any function assigned to him under these rules. Now, there are two classes of members in this House; of these two classes' the first is certainly comprehensive of the other. But the second is a specialized membership. If there is a specialized membership in this House and if in virtue of that specialization there are special powers given to such a special member, then that special member in so far as he has to exercise such powers is precluded certainly from exercising the category of powers that appertain to the ordinary member. I therefore feel that the hon. the Revenue Member was entirely wrong in giving his consent or presuming to give his consent to this matter. He had absolutely no business to give consent to a matter which he wanted to move as a member of this House. It is a most improper use of his power under rule 24-A and I request you to hold that it is illegal. It is illegal for the reasons I have stated; it is only the barefaced bureaucracy that is ruling this country in the name of liberalism, that can have the temerity to come forward and say through its Member of Government that he can give consent to a motion in which he and his Government are intimately interested. It is a misuse of the power that is given under Rule 24-A. I therefore have no hesitation in hoping that you will hold that the Member had no jurisdiction in this case to give his consent. If he chose, he could have said: 'I am the Member in charge; I cannot give consent; I shall move an ordinary resolution and take the risks of a ballot, risks of notice and risks of discussion later on.' He has no business to take shelter under the definition of a motion under 24-A and he has no business to come forward and say 'Here I am moving this particular resolution for the benefit of my Government.' It is a gross misuse of the power. I am sure, you, Mr. President, will protect the interests of this House, the privileges of this House. The privileges that we enjoy are certainly few, and these privileges should not be allowed to be cut off in this manner by a person using his specialised position in this House, who is not here either as an elected member or a nominated member but who is here ex-officio, in his capacity as Member of the Government. That he should have come forward with this particular motion is merely audacious.

"I want to elucidate another point in reference to Rule 24-A itself. There has been a great deal said about the three subjects, and I desire to point out to you, Sir, as President, that Rule 24-A does not take away your right to decide the subjects which have to be discussed under this rule; because,

whether you call it a motion coming under a special category, as you were pleased to put it yesterday, or whether you call it a resolution, it is clear that you have powers to rule it out of order, if it offends the rules and standing orders under which subjects should be brought forward in a resolution. 'Subjects in regard to which a resolution cannot be moved' are the words. There is no distinction made in the name of either a 'motion' or a 'resolution' so far as subjects are concerned. It has been attempted to make it appear that the word 'subjects' refers only to the three subjects mentioned in Rule 23 (1)."

* The hon. the PRESIDENT :—" That is a point which the Deputy Leader has already drawn our attention to. I don't like that the time of the House should be occupied by repeating arguments already advanced."

* Mr. G. HARISARVOTTAMA RAO :—" I am merely elucidating the Standing Orders. The Standing Orders are binding upon this House and the Standing Orders have to be enforced by you as President as long as they are not repugnant to the rules. There is a provision that a subject can be permitted to be discussed under this rule only when it comes within the subjects that can be moved as resolutions. Now I ask whether the standing order with regard to the limit of time of one year does or does not apply to this particular question. It does. Because the Governor is given power to rule what is an allowable subject under sub-rule (1) of Rule 23, that does not take away your power to rule that any subject is not a subject that can be discussed as a resolution. There is nothing in the standing orders that conflicts with the intention of this rule. You have the right to enforce this standing order and rule that this particular motion is out of order. On these two grounds I urge that this motion is entirely out of order and I request you to rule it as such."

* Mr. M. A. MANICKAVELU NAYAKAR :—" Mr. President, I am rather inclined to respond to the kind invitation of the hon. Member for South Kanara. Yesterday, in raising the point of order, the hon. Member for the University pointed out many objections. He referred to the latter portion of Rule 24-A namely 'except with the consent of the President and of the Member of the Government to whose department the motion relates', and said that in this case there is no such consent. The 'consent' theory applies only when the motion is brought forward by a private member of the House. When a motion is brought forward by a Member of the Government, the very fact of the moving of the motion will amount to consent *ipso facto.*

" Then the hon. Member referred to Standing Order No. 54 and said that it refers only to resolutions and not to motions. Now, resolutions stand apart from motions and then even in motions there are motions like adjournment motions, censure motions and motions of a peculiar sort like the one which we are having now. Standing Order No. 54, says '(*a*) it shall be clearly and precisely expressed and shall raise a definite issue; and (*b*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity.' Because this standing order refers only to resolutions and not to motions, have we in our practical experience, in moving adjournment motions and censure motions, couched them in language which is defamatory or ironical or in any way affecting the conduct or character of persons? We have not done so.

4th September 1928] [Mr. M. A. Manickavelu Nayakar]

"Therefore what is the provision under which such abuse is prevented? Standing Order No. 79 provides for such contingencies. It says: 12-30 p.m.

'The President shall have power to regulate the conduct of business in the Council in all matters not provided for in the Act, the rules or the Standing Orders.'

"Here in this case though Standing Orders Nos. 54 and 55 refer to resolutions and there is no mention about motions, Standing Order No. 79 comes to the rescue and helps in framing the language and subject matter of adjournment motions and special motions of the sort we are now considering. Therefore the argument that Standing Orders Nos. 54 and 55 refer to resolutions and that there is no special provision for motions of this sort is absolutely unfounded.

"Sir, coming now to the boycott resolution of January last, I may say that it was passed by many Members of the House with mental reservations. Sir, you may be aware that the hon. Mr. Krishnan Nayar then moved an amendment in which he clearly stated under what circumstances the House might prabably co-operate with the Commission. As many as 20 hon. Members voted for that motion and 30 or 35 remained neutral. That clearly shows that Members of the House then had different views on the boycott resolution. It is only for the sake of convenience that all sections of the House agreed to the bare skeleton of a resolution that was passed that day. Therefore, the resolution then carried is proof, if proof were needed, of the fact that different sections of the House interpreted it in different ways. Because one section of the House interprets it in one way, we cannot say that the matter cannot be reopened. As a matter of fact, after that resolution was passed many changes have taken place in the procedure of the Commission. It may be that in the opinion of a certain section of the House those changes do not mean much. Other sections of the House view it differently. Therefore you will be quite right in allowing the rediscussion of the question in view of what has happened."

* Rajkumar S. N. Dorai Raja :—"Mr. President, it is too late in the day to question the competency of the Government to move this motion. All Provincial Governments are subordinate to the Secretary of State who derives power from the Parliament which is the highest authority in the British Empire. When Parliament appointed this Commission, as Lord Birkenhead has said . . . ."

* The hon. the President :—"Is the hon. Member raising any new point of order or is he only answering the point of order already raised?"

Rajkumar S. N. Dorai Raja :—"Answering the point of order."

* The hon. the President :—"The hon. Member is trying to answer Mr. Saldanha's point of order?"

Rajkumar S. N. Dorai Raja :—"Yes, Sir (Laughter). My hon. Friend Mr. Satyamurti said that it was not the business of the Government to bring this motion."

Mr. S. Satyamurti :—"I did not contemplate this discussion, Sir. I raised a point of order and it is now entirely in your hands."

Rajkumar S. N. Dorai Raja :—"Apart from permutations and combinations and interpretations, the fact remains that my hon. Friends opposite know that they are fighting a losing battle."

[4th September 1928

Mr. S. SATYAMURTI :—"Sir, these remarks are hardly relevant to the point of order I have raised. We may yet win the battle in spite of Mr. Dorai Raja."

* The hon. the PRESIDENT :—"At this stage the hon. Member is requested to confine himself to the point of order."

Rajkumar S. N. DORAI RAJA : —"Sir, the Government is competent to bring in this motion." (Cries of 'Oh' from the Opposition benches.)

* Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—"Mr. President, Sir, it seems to me that the present objection is practically the same as was brought in yesterday, and on which you, Sir, have given your ruling. When once it has been ruled that the present proceeding before the House is not a '*resolution*' I fail to see how Standing Order No. 54 will stand in the way. It says :

'Subject to the restrictions contained in the rules and the Standing Orders, any member may move a "*resolution*" relating to a matter . . . .'

"When once your ruling was given yesterday that the present proceeding is not a 'resolution,' I am not able to see how that Standing Order has got any substantial bearing upon this preliminary objection.

"The next point urged by the hon. Member was that the consent mentioned in rule 24 A should not be that of the Member who moves. My submission is that this objection is equally untenable. With reference to '*resolutions*' which could ordinarily be brought forward only after giving 15 days' notice, under the provisions of Standing Order No. 53 except with the consent of the Member in charge, I understand that the practice of this House under Standing Order No. 53 has always been that it is open to a Member of Government himself to bring forward a resolution on shorter notice though he happens to be the Member of Government who has to give his consent."

Mr. C. V. VENKATARAMANA AYYANGAR :—"Is there any instance of that ?"

* The hon. the PRESIDENT : —"Mettur."

Mr. C. V. VENKATARAMANA AYYANGAR :—"Sir, the Advocate-General is referring to resolutions."

* The hon. the PRESIDENT :—"I think that with regard to the Mettur Project, the hon. the Law Member in charge of Irrigation tabled a resolution for the acceptance of the House."

Mr C. V. VENKATARAMANA AYYANGAR :—"Was it worded as a recommendation to Government ?"

* The hon. the PRESIDENT :—"It was not, I think, in the form of a recommendation to the Government. But there was a motion under the Cotton Transport Act. That Act requires that the rules framed should obtain the approval of the Council. It was put to the Council in this way on the former occasion : 'That this Council recommends to the Government that the following rules may be adopted."

Mr. C. V. VENKATARAMANA AYYANGAR :—"It is so probably on the present occasion."

* Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—"Some hon. Members may remember such occasions."

4th September 1928]

* The hon. the PRESIDENT :—" Even on a former occasion the wording was as follows : 'The Council approves and recommends to the Government that the rules may be adopted.' "

The hon. Diwan Bahadur M. KRISHNAN NAYAR :—" If I remember correctly, there have been many resolutions of that kind under the Local Boards Act also."

* The hon. the PRESIDENT :—" The question is whether the wording is 'recommends to the Government' or 'approves'. If it is only 'approves' it is a mere motion."

Mr. C. V. VENKATARAMANA AYYANGAR :—" Then the question of ballot will come in."

* The hon. the PRESIDENT :—" For Government resolutions there is no need for ballot."

* Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—" I am very much obliged to you, Sir ; if it were otherwise, it would be an idle formality when the Members of Government are unanimously agreed upon a particular point, that there should be one Member of Government in charge of a particular department to bring in a motion like this and formally get the consent of another member of Government. There is nothing in this which is wrong in principle when the power to grant consent is in one's (mover's) own hands. It is too much of technicality to say that he could give his consent only upon a formal application made by somebody else. So that, the argument that as the hon. the Revenue Member is the authority to grant permission, he is consequently disentitled from himself being the mover is, I submit, without any reason or foundation.

" Then much stress was laid upon the fact that Reforms (Simon Commission) could not be a 'subject' and that there could not be a department of Government like that and that consequently the rule requiring the consent of the Member in charge of the department could not be satisfied in this case. As hon. Members are aware, there is the main distinction in the Government of India Act as well as in the Legislative Council Rules between central subjects, provincial subjects and transferred subjects. All subjects that are not provincial subjects are central subjects. A reference to paragraph 12 of the Functions Committee Report makes that absolutely clear. It is said there that every subject which is not a provincial subject is a central subject. That is what item 47 of the Devolution Rules, Part I, also means. It is open to the Governor-General in Council in connexion with those subjects which are not provincial subjects to ask that the work in regard to the administration of such central subjects be done through the medium of the Local Government (Mr. S. Satyamurti : Agency work), and have the administration of such central subjects thus carried on. In rule 46 it is provided that when arranging for such work the Governor will follow the same procedure in distributing the portfolio among the Members of his Council. I find from page 2 of Volume XLII of the Legislative Council Proceedings of 15th March 1928 that the subject of Reforms (No. 12) is in the portfolio of the hon. the Revenue Member. That being so, for the purpose with which we are now concerned, namely, the authority for the time being who supervises that particular subject, we have got the expression of opinion of the Governor in Council that the hon. the Revenue Member is the person who is to be in

[Mr. C. V. Anantakrishna Ayyar.] [4th September 1928

charge and is to supervise matters relating to it. That being so, the hon. the Revenue Member is the Member in charge of that department. There is nothing particularly magical in the word 'department.' Looking into the pocket Oxford Dictionary, I find that 'department' means 'any of the separately managed branches of a great organization, especially the affairs and officials supervised by a Minister of State.' So that in any reference to a subject supervision over which is delegated to any particular member, it is clear that that member should be taken to be in charge of that department. That being so, there is nothing wrong in that member himself making a motion and in giving his consent, as required by rule 24-A. It is thus apparent that none of the objections taken are tenable, while the main objection now taken has been disposed of by your ruling yesterday."

The hon. the PRESIDENT :—"I shall give my ruling after lunch interval. 12-45 p.m. The Council will now adjourn and re-assemble at 15 minutes after 2 p.m."

The House accordingly adjourned for lunch.

After lunch 2-15 p.m.

DURATION OF THE PRESENT SITTING OF THE COUNCIL—*cont.*

* The hon. Sir NORMAN MARJORIBANKS :—"Regarding the time that is required for Government business, I may say that as these two days, namely, Monday and Tuesday, have been already taken up by the House in discussing this motion, the Government will require either Friday or Saturday for finishing their business."

(One Member remarked that he could not hear anything as to what the hon. the Leader of the House said.)

* The hon. the PRESIDENT :—"The question is how long this sitting is likely to continue. Friday being a holiday, the House will have to sit on Saturday. If, however, hon. Members have no objection to continue the sitting on Friday, Government too will have no objection. But if they have any objection to continue the sitting on Friday, the Council will have to sit on Saturday. That is what the hon. the Leader of the House said."

Mr. SAMI VENKATACHALAM CHETTI :—"So far as the notification went, the Members of the Legislative Council were informed that there would be two non-official days and two official days."

* The hon. the PRESIDENT :—"The practice is to give intimation to hon. Members only of the allotted number of non-official days. Government act on the presumption that the Council will continue to sit till all their business is finished."

Mr. SAMI VENKATACHALAM CHETTI :—"I do not object to that, Sir. But what I submit is that we were intimated that only two days would be allotted for official business."

* The hon. the PRESIDENT :—"My Secretary says that he did not give any intimation to hon. Members about the number of official days."

Mr. SAMI VENKATACHALAM CHETTI :—"So long it has been the custom for the House to adjourn soon after the allotted days for non-official business are over."